IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 77 OF 2007

Smt. Taraben Jamnadas ..Applicant

Vs.

Narendra Kumar Khetsi and ors. ..Respondents

Mr. Mihir Gheewala with M. Dhila i/by M/s. Hariani and Co. for applicant.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 01, 2007.

P.C.:

1. Heard the learned counsel for the applicant who is the original complainant in C.C.No. 575/SS/2004. The said complaint was filed under Section 138 of Negotiable Instruments Act, 1881 alleging that the respondent no.3 in his capacity as authorised signatory of respondent no.1 had issued cheque bearing No. 455397 dated 31/3/2004 for a sum of Rs.17,47,050/- and the said cheque was dishonoured on 2/4/2004. The learned Metropolitan Magistrate,

28th Court, Esplanade, Mumbai dismissed the complaint. Hence this application for special leave to appeal under Section 378 (4) of Cr.P.C.

2. In addition to the annexures to the application as well as to the appeal memo, I have also perused the copy of the complaint filed before the learned Metropolitan Magistrate. The trial court held that the complainant could not prove that the dishonoured cheque was for repayment of debt or any legal liability.

3. On behalf of the complainant PW 2 - Mansukhlal had stepped in the witness box and accused no.3 examined himself in support of his case that there was no legally enforceable liability for which the subject cheque was issued. In addition, two bank officers i.e. one from the Canara Bank and the other from the Bank of India were examined. It was admitted by the complainant through the evidence of PW 2 Masukhlal that the loan transaction of the year 1996-97 was already cleared by the accused no.1 and a fresh loan of Rs.15 lacs was given to accused no.1 on 27/4/2000

from the account of Canara Bank and this was proved by the bank's statement at Exh.41 and it was the case of the complainant in the complaint that the cheque of Rs.17,47,050/- was issued on 21/3/2004 against the said liability of the loan dated 27/4/2000 of Rs.15 lacs with interest. PW 2 - Mansukhlal admitted that on 29/10/2001 Taraben had received the cheque of Rs.10,14,000/- and the bank's statement clearly went to show that the said cheque was encashed. The trial court also examined the issue of interest at 18% and recorded a finding that after having received the payment of Rs.10,14,000/- in October, 2001 the balance loan amount could not be Rs.17,47,050/- and the complainant had not taken into consideration the repayment of the loan amount to the extent of Rs.10,14,000/-. The trial court rejected the defence of the accused no.3 that the loan transaction in April 2000 was false and that all the loan amount was cleared by way of repayment. The trial court also accepted that accused no.3 was the authorised signatory of the accused no.1 but at the same time complaint came to be dismissed for the reasons that the dishonoured cheque of Rs.17,47,050/- could not be

treated to be a cheque in discharge of the loan liability of April 2000 for the amount of Rs.15 lacs on account of the proved fact that on 29/10/2001 Taraben had already received Rs.10,14,000/-.

4. The learned counsel for the applicant tried to submit that there was a promissory note which was a subsequent transaction after April 2000 and the amount of Rs.10,14,000/- was paid in discharge of the said promissory note. Such a plea does not find place in the complaint. Hence the reasoning set out by the trial court in support of the order of acquittal does not call for reconsideration by this court and hence there is no case made out to grant special leave to appeal.

5. The application is rejected summarily.

(B.H. Marlapalle,J.)